

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
SUPREME COURT DOCKET NO. 2015-SC-194

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SUPREME COURT

FAMILY DOLLAR

APPELLANT

vs.

MAMIE BAYTOS, WIDOW OF STEPHEN BAYTOS
HON. RICHARD M. JOINER, ALJ;
HON. THOMAS G. POLITES, ALJ
and WORKERS COMPENSATION BOARD

APPELLEES

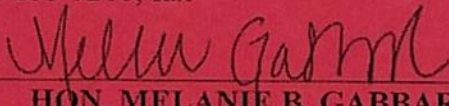
Appeal from Kentucky Court of Appeals 2014-CA-001053-WC

BRIEF ON BEHALF OF THE APPELLANT, FAMILY DOLLAR

Respectfully Submitted,

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BY:


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CERTIFICATE

In accordance with C.R. 5.02 and C.R. 5.03, I hereby certify that ten (10) copies of the Appellant's Brief were served via hand delivery, on the 18th day of June, 2015, to Susan Clary, Clerk of the Supreme Court of Kentucky, Capitol Building, Frankfort, KY 40601; and copies to: Sam Givens, Clerk of the Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Workers' Compensation Board, Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky 40601; Hon. Carl Grayson, Blankenship Massey & Associates, PLLC, 504 Erlanger Road, Erlanger, KY 41018, Attorney for Mamie Baytos; Hon. Tom Polites, ALJ, 2780 Research Park Drive, Lexington, KY 40511, reassigned ALJ; Hon. Richard Joiner, 145 East Center Street, Madisonville, KY 42431. A courtesy copy has also been sent to Hon. Jeff Roberts, 509 Main Street, Murray, KY 42071, attorney for KIWA.


HON. MELANIE B. GABBARD

INTRODUCTION

This is a case in which the Court of Appeals vacated and remanded the decision of the Workers' Compensation Board and awarded benefits under KRS 342.750 to Mamie Baytos, widow of Stephen Baytos, following a full and final resolution of his claim via settlement effectuated prior to his death in December 2009. The Appellant, Family Dollar, challenges the decision of the Court of Appeals and asserts that the Court of Appeals erred as a matter of law.

STATEMENT CONCERNING ORAL ARGUMENT

The Appellant, Family Dollar, avers that this appeal raises an issue of first impression in Kentucky, with far-reaching implications for the payment and settlement of future benefits under the Workers' Compensation Act. For this reason, the Appellant would respectfully submit that Oral Arguments are necessary in order for the Court to fully evaluate and decide the issue presented.

STATEMENT OF POINTS AND AUTHORITIES

Introduction.....	1
Statement Concerning Oral Argument.....	1
Statement of Points and Authorities.....	2
Statement of the Case.....	3
Argument.....	6
<u>Brashear v. Old Straight Creek Coal Corp.</u> , 236 Ky. 83, 32 S.W.2d 717 (1930)...	6
KRS 342.750.....	6
KRS 342.730.....	7
<u>Jefferson County Board of Education v. Fell</u> , 391 S.W.3d 713 (2012).....	7
<u>Brusman v. Newport Steel Corp.</u> , 17 S.W.3d 514 (2000).....	8
<u>Larson's Workers' Compensation</u> , Desk Edition Section 98 (2007).....	10
<u>Tackett v. Bethenergy Mines, et al.</u> , 841 S.W.2d 177 (1992).....	10
<u>Taylor v. Cornett Lewis Coal Co.</u> , 281 Ky., 366, 136 S.W.2d 21 (1940).....	12
<u>Hitachi Automotive Products USA, Inc. v Craig</u> , 279 S.W.3d 123 (2008).....	13
<u>Newburg v. Weaver</u> , 866 S.W.2d 435 (1993).....	13
<u>Bell v. Consol of Kentucky, Inc.</u> , 294 S.W.3d 459 (2009).....	13
<u>Jude v.Cubbage</u> , 251 S.W.2d 584 (1952).....	13
Conclusion.....	15
Appendix.....	16

STATEMENT OF THE CASE

Family Dollar appeals from the March 20, 2015, Opinion of the Court of Appeals vacating and remanding the June 2, 2014 Order of the Workers' Compensation Board.

Stephen Baytos sustained a torn thoracic aorta on February 9, 2006 while stocking shelves and lifting boxes at Family Dollar. He filed a claim for workers' compensation benefits which was adjudicated to an Opinion and Award and then subsequently resolved via settlement, which was approved on July 10, 2008.

The settlement agreement effectuated by the parties and approved by the Administrative Law Judge represented a full and final resolution of all benefits under the Workers' Compensation Act, including past and future income benefits; waiver of right to reopen the claim under KRS 342.165; waiver of entitlement to vocational rehabilitation; and waiver of entitlement to future medical benefits under KRS 342.020. Stephen Baytos subsequently died on December 3, 2009 of an acute rupture of the thoracic aorta.

On August 31, 2011, Mamie Baytos, widow of Stephen Baytos, filed a Motion to Reopen the claim to request payment of income benefits to her under KRS 342.750. Administrative Law Judge Richard Joiner bifurcated the claim to first determine whether or not Mamie Baytos, as a widow, had the right to assert entitlement to benefits under KRS 342.750 following a full and final settlement of benefits by her husband prior to his death.

ALJ Joiner rendered his decision on the legal issue of entitlement to benefits on June 19, 2012, ruling that the widow's claim for benefits was entirely her own and

not barred by settlement achieved by the Plaintiff. ALJ Joiner's opinion was interlocutory given the bifurcation of the claim.

The second issue to be decided was the factual issue of whether or not Stephen Baytos' death was the direct result of his work-related injury. The secondary portion of litigation was assigned to ALJ Tom Polites upon the retirement of ALJ Joiner. Following litigation, ALJ Polites rendered a decision on February 3, 2014, finding that Stephen Baytos' death was work-related and awarded benefits to the widow under KRS 342.750.

Family Dollar appealed the decision of ALJ Joiner to the Workers' Compensation Board on the sole issue of whether or not the widow was legally entitled to benefits under the Act. No appeal of the factual finding was taken. On appeal to the Board, Family Dollar argued that Mamie Baytos had no separate right of action under KRS 342.750 due to the derivative nature of her claim to the injured worker.

On June 2, 2012, the Workers' Compensation Board issued an Opinion Vacating and Remanding the claim to the ALJ with directions to dismiss the claim in its entirety. In their Opinion the Board noted that the intent of the statute and the public policies which favor settlements effectively extinguish the rights of the widow following a full and final settlement by the injured worker prior to his death.

Mamie Baytos appealed the decision of the Workers' Compensation Board to the Kentucky Court of Appeals on June 30, 2014 arguing that widow benefits are not derivative and that a widow's claim could not be extinguished by the settlement of the injured worker.

On March 20, 2015, the Court of Appeals rendered a decision vacating and remanding the claim back to the Workers' Compensation Board for an Order consistent with their findings that the widow, Mamie Baytos, was not prohibited from seeking benefits under KRS 342.750. The Court opined that there is a clear and separate right of the surviving spouse to seek compensation. Court of Appeals Opinion, p. 6. The Court of Appeals based their opinion on a 1930 opinion, noting that their reliance on case authority relinquished the need for an assessment of statutory construction. Id.

This appeal follows.

ARGUMENT

STEPHEN BAYTOS' RESOLUTION OF HIS CLAIM FOR BENEFITS PRIOR TO HIS DEATH PROHIBITS HIS WIDOW, MAMIE BAYTOS, FROM BRINGING HER OWN CLAIM FOR BENEFITS UNDER KRS 342.750

The Erroneous Reliance on *Brashear v. Old Straight Creek Coal Corp*

The Court of Appeals relied singularly upon *Brashear v. Old Straight Creek Coal Corp.*, 236 Ky. 83, 32 S.W. 2d 717 (1930), holding that a final settlement does not prevent an award to a widow. Specifically, the Court held that *Brashear* establishes the clear and separate right of the surviving spouse to seek compensation. The Appellant respectfully disagrees with not only their reliance on this case but their opinion that “nothing in the current statutes contradicts *Brashear*, and its circumstances are strikingly similar to the ones in the case before us.” *Court of Appeals Opinion*, p.6.

Though the Court of Appeals felt that the clear holding of the *Brashear* case circumvented any need to seek guidance by statutory construction, the statute upon which this appeal turns- KRS 342.750- was enacted in 1972, forty-two years following the *Brashear* holding. Further, since the *Brashear* decision was rendered no Kentucky court has cited it as authority or relied upon its holding in addressing entitlement to widow benefits under the Workers' Compensation Act. The Court of Appeals in this claim is the sole citing reference for this claim.

The Legislative Intent and Statutory Construction of the Act Compel a Finding in Favor of the Appellant

The Court of Appeals held that Mamie Baytos' entitlement to benefits is not derivative of the benefits claimed or received by her deceased husband. The Court further noted that the Workers' Compensation Board erred in finding that the settlement of Stephen Baytos' claim for income benefits, in part under KRS 342.730, precluded his widow from seeking the same type of benefit under KRS 342.750. The Court of Appeals found that the Workers' Compensation Board did not provide any authority for its holding that Mamie Baytos' claim was barred by Stephen Baytos' settlement with Family Dollar and, as a result, relied only on the precedent provided by Brashear.

The Board's opinion, however, makes clear that the Board did in fact make a thorough analysis of the statutes that govern this case. The Workers' Compensation Board expressly opined that with regard to the Workers' Compensation Act as a whole, the General Assembly intended the statutes to "harmonize with related statutes." Workers' Compensation Board Opinion, (hereinafter Board Opinion) p. 6, *citing Jefferson County Board of Education v. Fell*, 391 S.W. 3d 713, 718 (2012). The Board relied upon that case, holding that the benefits set forth in both KRS 342.750 and KRS 342.730 are referred to as "income benefits." The Workers' Compensation Board concluded that the intent of the General Assembly in the enactment of KRS 342.730 and KRS 342.750(1) was to provide two alternative methods of calculating the same award of benefits, depending on whether or not the claimant died as a result of the injury. Board Opinion, p.6.

In reviewing these two statutes, it is notable that KRS 342.730(3) states as follows:

Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his or her lifetime, dies from cause other than the injury before the expiration of the compensable period specified, portions of the **income benefits** specified and unpaid at the individual's death, whether or not accrued or due at his or her death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in proportion and upon the conditions specific in this section and in the order named...

[emphasis added]

Similarly, KRS 342.750, states as follows:

If the injury causes death, **income benefits** shall be payable in the amount And to or for the benefit of the persons following, subject to the maximum Limits specified in subsections (3) and (4) of this section...

[emphasis added]

The Board's analysis of the legislative intent and interplay of these two statutes is not novel. Death benefits as set forth in the Kentucky Workers' Compensation Act are awarded under KRS 342.750 if the workers' death resulted from a work-related injury or occupational disease and under KRS 342.730(3) if the deceased worker was receiving or entitled to benefits because of a work-related injury or disease at the time of his/her death, but died from a non-work related cause. A discussion of the relationship between these two statutes is set forth in Brusman v. Newport Steel Corp, 17 S.W.3d 514 (2000). In Brusman, this Court held that from its initial enactment in 1916 until the first major revision in 1972 the Kentucky Workers' Compensation Act had but one provision for paying benefits to survivors of deceased workers. Id. at 515. This was KRS 342.070.

In the 1972 session of the General Assembly, the Workers' Compensation Act underwent a major revision. The General Assembly repealed KRS 342.070 and **jointly** enacted KRS 342.750 and KRS 342.730(4)[now 3]. Id at 516.

Though the facts surrounding the Brusman case are not relevant to the claim at bar, the statutory discussion provided by the Supreme Court provides insight and guidance to the intent behind the enactment of KRS 342.730(3) and KRS 342.750, which provide survivor benefits. With respect to benefits provided for widows, widowers and children "the statutory schemes are virtually identical, except that benefits are greater if the employee's death was work-related." Id. at 517.

In Brusman, the court did not separate KRS 342.750 and KRS 342.730(3) as distinguishable statutes for purposes of intent, but merely noted that the only difference between the two was that KRS 342.750 provided for benefits when the death was caused by the injury and KRS 342.730(3) provided for benefits when the death was unrelated to the injury. Aside from this single factual difference, the construction and intent of the statutes are identical.

Because the courts have consistently construed the two death benefit statutes (KRS 342.730(3) and KRS 342.750) as establishing the payment of income benefits deriving from the injured worker, allowing Mamie Baytos to recover benefits frustrates the statutory intent of the Act. Stephen Baytos was awarded income benefits which were fully and finally resolved by settlement and these benefits were paid in full. Recovery of additional income benefits by Mamie Baytos under KRS 342.750 would allow for a double recovery of benefits from a single injury.

Mamie Baytos' Entitlement to Benefits under KRS 342.750 is Derivative of the Claims of her Deceased Husband, Stephen Baytos.

The Court of Appeals also relied on Larson's Workers' Compensation, Desk Edition Section 98 (2007) in holding that

the dependent's right to death benefits is an independent right derived from statute, not from the rights of a decedent. Accordingly, death benefits are not affected by compromises or releases executed by decedent...

The Court of Appeals cited cases supporting the notion that the entitlement to death benefits is an independent right not derived from the rights of a decedent. These cases arise from a number of jurisdictions- Oregon, Nevada, New Jersey, New Mexico, Idaho, and Colorado- none of which incorporate authority from the state of Kentucky or our Workers' Compensation Act.

While the central issue of this appeal is a novel one, Kentucky workers' compensation is a unique creature of statute, enacted by the governing bodies of our state and our state alone. The ancillary guidance provided by Larson's is irrelevant and distracting when our Courts require an analysis of the law by controlling state cases and statutes. Statutory construction, legislative intent and published case law all dispute the treatise opinion by Larson.

This Court addressed the derivative nature of widow benefits in Tackett v. Bethenergy Mines 841 S.W.2d 177 (1992). In the Tackett case, surviving spouses of former coal miners filed applications for workers' compensation benefits under KRS 342.730(3). Their claims were dismissed and upon appeal, the Supreme Court held that because there were no benefits due and owing to the workers themselves at the time of their deaths, no benefits were available for their widows. The Supreme Court's holding

on this issue was that “any claim which a deceased worker’s estate might have derives from a valid claim by the worker.” Id at 179.

Applying the facts of Tackett to the claim presented here is a logical expansion of the congruent statutory construction and intent of KRS 342.730(3) and KRS 342.750. In order for a widow to bring a valid claim for benefits she must first prove that entitlement to those benefits. KRS 342.730(3) and KRS 342.750 differ only in the circumstances surrounding the death of the claimant. Stephen Baytos, much like the deceased coal miners in Tackett, had no benefits available to him at his death as he had resolved all entitlement to benefits under the Act as a whole via a settlement which was approved in July 2008. At the time of his death in December 2009, no benefits remained for his injury claim. Likewise, no benefits are available to his widow under KRS 342.750.

The Court of Appeals ruling sits in opposition to the Tackett case. The Court utilized Brashear and Larson’s Workers’ Compensation to conclude that there is a “clear and separate right of the surviving spouse to seek compensation.” Court of Appeals Opinion, p. 6. Taking this broad stance would imply that a widow would have both a clear and separate right under KRS 342.730(3) as well as KRS 342.750; however, Tackett has dispelled the notion that a widow’s rights to compensation are hers and hers alone under KRS 342.730(3). With no opinion by any court, including the Court of Appeals in this claim, that KRS 342.750 carries a different statutory intent, we implore the Court to evaluate the statutory construction and relevant case law in concluding that widow benefits are derivative of the claims of the injured worker.

The Appellee can cite to no case which supports the position that a widow’s claim to benefits under KRS 342.750 is hers and hers alone. They will ostensibly rely instead

on Taylor v. Cornett Lewis Coal Co. 281 Ky., 366, 136 S.W. 2d 21 (1940), for the ability for a widow to bring a claim for benefits following a settlement of the injured workers' claim. Admittedly under Taylor a widow has standing, in certain circumstances, to assert a claim for benefits. However, only when the widow can bring an **original** claim before the ALJ. In the Taylor case, the widow and infant children filed a claim seeking benefits under the Act after he died in a coal mine. As the deceased worker, Taylor's original action and his original claim for benefits had to be assumed by his spouse and dependents. The result of this case have no application to the claim at bar as the rights of a widow to bring a claim as set forth in Taylor was subsequently codified as part of the enactment of KRS 342.730(3) and KRS 342.750 in 1972.

The Appellee will argue that Taylor stands for the proposition that settlement does not bar a widow's claim for survivor benefits; however, this is an inaccurate characterization of the holding. The issue decided by the Court is whether a widow, as a matter of right, can bring an original claim under the Workers' Compensation Act *on behalf* of her deceased spouse. Admittedly, a widow, upon the untimely work-related death of her spouse, can bring an original action to obtain benefits as a surviving dependent.

In comparing the 1940 Taylor case in which a widow was permitted to bring an original cause of action for benefits on behalf of her husband, to the 1992 Tackett claim which addressed the availability of benefits to a widow under the already enacted provisions of KRS 342.730(3) and KRS 342.750, it is abundantly clear that statutory intent and case authority support the position that while a widow may bring an action

where no benefits have been received, she is unable to bring her own cause of action following the complete resolution and conclusion of her deceased spouse's claim.

The Kentucky Workers' Compensation Act Favors the Prompt Resolution of Claims.

From a public policy standpoint, upholding the Opinion of the Court of Appeals will effectively impair a party from settling a workers' compensation claim on the basis of a complete resolution. Here, both Stephen Baytos and Family Dollar executed a final settlement agreement with the understanding that Stephen Baytos would receive a lump sum settlement in return for a complete waiver of all benefits under the Workers' Compensation Act. Following the approval of the settlement agreement, the claim was fully and finally concluded; however, now the claimant's widow attempts to receive additional benefits based upon an injury claim which was previously resolved.

The Kentucky Workers' Compensation Act is replete with statutory language favoring the prompt resolution of workers' compensation claims. Hitachi Automotive Products USA, Inc. v. Craig , 279 S.W.3d 123, 126 (2008). Further, beyond the mere directive that claims should be resolved promptly, the courts have consistently encouraged settlement of claims. Newburg v. Weaver, 866 S.W. 2d 435, 438 (1993). Public policy also favors the enforceability and acceptance of all settlement agreements, noting that "an approved settlement carries the force and effect of an award." See Bell v. Consol of Kentucky Inc., 294 S.W.3d 459, 462 (2009) citing Jude v. Cabbage 251 S.W.2d 584, 586 (1952).

Allowing a widow to bring her own claim following the death of an injured worker who has no available benefits remaining related to his work injury will set precedent which

will likely impede the ability for employers to have satisfaction that their claims are truly concluded.

Both KRS 342.730 and KRS 342.750 provide for income benefits to be paid to a widow or widower as well as dependent children; in more uncommon circumstances, the statutes also provide for benefits to be paid to dependent parents, brothers, sisters, grandparents and grandchildren. While the Appellant recognizes that this particular claim presents a set of facts and circumstances that would not necessarily be present in the majority of cases, it is worth mention that attempting to resolve dependent rights at the time of settlement with an injured worker will complicate the ability to settle claims on a full and final basis.

The Appellee will ostensibly suggest to the Court that it is common or even possible to effectuate a waiver of dependent rights at the time of settlement with the injured worker. It is not this simple. Settlement with a claimant at the time of injury can conceivably consider only the known dependents available at the time of execution. However, if this Court applies Appellee's argument, in order to resolve a claim with an injured worker and his potential surviving dependents the parties would have to seek out both current dependents and potential future dependents. Negotiating settlements would devolve into a complex barrage of obstacles and potential litigation which would stand in the way of the prompt resolution of claims.

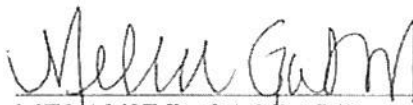
This is simply not the intent of the statute. The nature of the Workers' Compensation Act is to effectuate prompt resolution and payment of claims, with an urging toward settlement to reduce the cost and time involved in litigation. Frustrating this process by allowing a widow to bring her own cause of action after the full, final and complete

resolution of the injured workers' claim will impact the ability to satisfy the closure of claims for benefits.

CONCLUSION

Wherefore, the Appellant prays that the Kentucky Supreme Court REVERSE the findings of the Court of Appeals and DISMISS the Appellee's claim for benefits under KRS 342.750.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Melanie Gabbard".

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